

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3002 OF 2023

M/s Chhindwara Fuels
A partnership firm through its
Partner Chandankumar s/o Motilal
Agarwalla, P. O Junnardeo,
Distt. Chhindwara (M.P) 480551 ... Petitioner

vs.

1. Western Coalfields Ltd.
Through its Chairman cum
Managing Director, Coal Estate,
Civil Lines, Nagpur
2. Area General Manager,
Western Coalfields Ltd.
Kanhana Area, Doongaria,
Tq. Junnardeo, Distt. Chhindwara ... Respondents

WITH
WRIT PETITION NO.2790 OF 2023

M/s Arpana Enterprises,
Prop. M/s Vidarbha Industries Ltd.
Through its Director H. K. Dass,
Junnardeo, Distt. Chhindwara ... Petitioner

vs.

1. Western Coalfields Ltd.
Through its Chairman cum
Managing Director, Coal Estate,
Civil Lines, Nagpur
2. Area General Manager,
Western Coalfields Ltd.
Kanhana Area, Doongaria,
Tq. Junnardeo, Distt. Chhindwara ... Respondents

WITH
WRIT PETITION NO.3512 OF 2023

1. M/s Shashikant & Co.
A partnership firm through its

partner Devang Arunkumar Ghelani,
Junnardeo, Distt. Chhindwara

2. M/s Amalgamated Cokes & Fuels
(India) Pvt. Ltd. Through its Director
Salim S/o Miyakhan Bharti Junnardeo,
Post Junnardeo, Distt. Chhindwara ... Petitioners

vs.

1. Western Coalfields Ltd.
Through its Chairman cum
Managing Director, Coal Estate,
Civil Lines, Nagpur
2. Area General Manager,
Western Coalfields Ltd.
Kanhana Area, Doongaria,
Tq. Junnardeo, Distt. Chhindwara ... Respondents

Shri Sureshchandra Mehadia, Advocate for the petitioners.
Shri A. M. Ghare, Advocate for respondents.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.
DATE : JUNE 19, 2023

Common Judgment : (Per : A. S. Chandurkar, J.)

1. Rule. Rule made returnable forthwith. Since common issue arises in these writ petitions, they are being decided together by this common judgment.

All the petitioners pursuant to being successful in the e-auction that was held by the respondents for lifting of coal and transporting the same are aggrieved by the insistence on the part of the respondents in not permitting the petitioners to use Tippers for lifting and transportation of coal.

2. The learned counsel for the petitioners submits that in terms of the

e-auction on the basis of which the petitioners are entitled to lift and transport the coal, there is no restriction to use of Tippers for the said purpose. Despite that, the respondents seek to prevent the petitioners from using such Tippers for lifting and transporting coal. Inviting attention to the judgment in Writ Petition No.6791/2017 (*Shashikant & Company and ors. vs. Western Coalfields Ltd. and anr*) decided on 03/09/2018 he submits that a similar issue has been decided and despite such adjudication the insistence on the part of the respondents in not permitting use of Tippers continues. It is thus prayed that appropriate directions be issued to the respondents in that regard.

3. The learned counsel for the respondents supported such insistence on the part of the Western Coalfields and urged that it was open for the respondents to impose such restriction when found necessary. There was no reason for this Court to invoke jurisdiction under Article 226 of the Constitution of India.

4. Having heard the learned counsel for the parties and having perused the documents on record we find that the issue raised in the present writ petition is no longer *res integra*. The Division Bench in *Shashikant & Co.* (supra) has observed in clear terms that under the e-tender conditions, there being no prohibition imposed for lifting coal by use of Tippers, it was not permissible for the Western Coalfields to impose such restriction. A direction

was issued to the respondents not to impose such restriction in any manner. We find that in absence of any such stipulation or restriction in the e-auction notice or the conditions therein, there does not appear to be any legal justification for such stand. Though it would be open for the tender inviting Authority to impose appropriate condition by disclosing the same in the tender notice, without doing so such restriction having been held by this Court to be not permissible, the same cannot be insisted upon.

5. For aforesaid reasons the respondents-Western Coalfields Limited is directed not to restrain the petitioners from use of Tippers for lifting and transportation of coal in absence of any such stipulation in the tender notice or conditions therein on the basis of which the petitioners are lifting coal. Needless to observe that it would always be open for the respondents to prescribe such conditions as they deem fit by providing for the same in the tender notice and this Court does not express any opinion on the legality or otherwise of such imposition of conditions. That aspect can be examined as and when the occasion arises.

6. Rule is made absolute in aforesaid terms with no order as to costs.

(MRS VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)